Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
National Exchange Carrier Association	)	WC Docket No. 04-259
Petition to Amend Section 69.104 of the	)	
Commission's Rules	)	RM-10603
	)	

REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's *Notice*[1] and Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") respectfully submits this Reply to the Comments filed on a proposal to change the assessment of the subscriber line charge ("SLC") in a manner that would shift the recovery of substantial portions of common line costs away from the SLCs paid by multi-line business customers to subsidy mechanisms funded by residential and single-line business customers.[2]

INTRODUCTION AND SUMMARY

NECA proposes to reduce from twenty-four to five the number of SLCs that may be assessed on customers of derived channel T-1 service ("DCS Service") where the customer provides the terminating channelization equipment. The Commission should reject the proposed changes sought by NECA and retain the existing rules, as the other parties commenting on the

[1] *National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules*, Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, And Order Granting Interim Partial Waiver, FCC 04-174, 19 FCC Rcd. 13591 (2004) ("*Notice*"), published in 69 Fed. Reg. 50141 (Aug. 13, 2004). The Commission extended the comment period upon the Joint Motion of BellSouth, SBC and Verizon, 2004 WL 2255103 (rel. Oct. 6, 2004) ("*Extension Order*").

[2] Comments were filed by National Exchange Carrier Association ("NECA"), SBC Communications, Inc. ("SBC"); the Verizon telephone companies ("Verizon"), and AT&T.

NECA proposal all urge. First, NECA has not satisfied its obligation under the *Notice* to support the relief it seeks with an adequate cost study, sufficient to enable the Commission to assess the cost relationship between DCS and analog service. Further, the Commission should reject NECA's proposal because it would undercut the Commission's long-standing and continuing efforts to eliminate subsidies and better align rates with costs. Verizon's proposal to allow price cap carriers to apply five SLCs only to *new* DCS services should also be rejected because Verizon has failed to provide any cost support for its proposal and because it would be discriminatory and inconsistent with the price cap rules.

I. NECA Has Failed To Provide Sufficient Data To Establish That The Cost Relationship Between Derived Channel T-1 Service And Basic Analog Service Justifies The Rule Change It Proposes.

In the *Notice* (¶ 18), the Commission tentatively concluded that the number of SLCs assessed for derived channel T-1 services where the customer provides the channelizing equipment service "should be based on the actual common line cost relationship between [DCS and basic analog] services." While the record "suggest[ed] that this relationship may be somewhere between 1.5:1 and 5:1", the Commission found that the "record did not include any cost studies and instead is based on only descriptive relationships and summary analysis"; and was therefore "insufficient to support any specific rule change." *Id.*, ¶ 19. Thus, the Commission required that "parties asserting a particular cost relationship . . . support their claims with a cost study showing the common line costs for derived channel T-1 service and basic, analog service, respectively." *Id.* The cost studies, the Commission added, "should be sufficiently detailed to enable us to discern the common line relationship between these services with reasonable accuracy." *Id.*

The data submitted by NECA fail to establish adequately a cost relationship that justifies the rule change it proposes. NECA submits Attachments B1, B2 and B3 to its Comments to support its proposal to establish a fixed 5-to-1 ratio between DCS and basic analog service. Attachment B1 simply compares the common line base factor portion per line cost to the rate for a Special Access T1.5 line. Attachment B2, although not presenting any data or assumptions, shows some summary information implying that ISDN and DCS costs are virtually identical.[3] The logical conclusion NECA draws from this is that *if* the relative costs of DCS and ISDN are similar, then their relationship to basic costs must also be similar. NECA does not, however, demonstrate that the costs of the two services actually are similar. Finally, in Attachment B3, NECA provides a set of ratios that attempts to compare the relative cost of various technologies to the cost of basic telephone service. None of these Attachments provides the cost analysis required by the Commission in paragraphs 18 - 21 of the *Notice*.

As noted, the information provided in Attachment B1 is simply a comparison of the average per line NECA common line revenue requirement to the rate NECA develops for its T1.5 channel termination service.[4] Not only is the relationship between the common line revenue requirement and the T1.5 rate inappropriate for this comparison since rate relationships are not necessarily cost relationships, but it is clear that the rate for T1.5 channel termination service is at best a pseudo cost estimate.[5] As outlined in NECA's annual filing, the T1.5 rate is

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[3] In Attachment B2, NECA notes that its average result is weighted based on data from its annual filing but NECA does not provide the source of the lines used to do the weighting or any of the cost results.

[4] NECA's Attachment B1 compares 25% of the T1.5 Channel termination rate to the average per line common line revenue requirement and concludes that the relationship between 25% of the special access T1.5 rate and the common line cost is 3.58 to 1.

[5] *See* NECA June 16, 2004 Annual Filing, Volume 5, Section 6, and Volume 5, Exhibits 7 through 13.

created based on a large number of unknown, unspecified assumptions and a set of index values that are not on this record.[6] Further, it is clear that NECA does not develop its special access rates based on the specific cost of each special access service. Instead, the special access rate development process relies on a series of ratios which NECA calls "index values." The index values are used to weight the various categories of special access demand so that that the sum of the rates times the demand for each category will close to a revenue requirement.[7] The specific index value for a T1.5 channel termination is 4.28 and has not been revised for several periods.[8] Other special access services have different index values and have also remained unchanged for several years.[9]

As an alternative approach, NECA states that it collected data from its Rate Development Task Force ("RDTF") to determine the costs of basic analog voice, DCS, and PRI-ISDN service. In each case, these costs are supposed to be of a "representative" network configuration, though that claim is based only on NECA's unsupported assertion. In addition, NECA (Comments at 3) gathered data associated with the termination of each of these services. Notwithstanding the Commission's clear directive, NECA has not provided any of the assumptions used by the RDTF nor has it provided any inputs or outputs from the study. In fact, NECA does not even provide

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[6] *Id.* For example, NECA, at Volume 5, Section 6G, refers to an internally commissioned "Martin Group" study that NECA states it used to develop DSO, DS1, DS3 OC3 and OC12 unit investments. That study, however, is provided neither here nor in the annual filing and thus cannot be used to verify NECA's assumptions.

[7] NECA June 16, 2004 Annual Filing, Volume 5, Exhibit 12, Workpaper 4 of 13.

[8] AT&T cannot determine how the ratio of 4.28 was originally derived. It is, however, clear that it cannot represent a current cost relationship and by applying the demand, weighted by index values, NECA's special access rates are unlikely to reflect the current costs, nor could they ever reflect the specific costs of the service. The index value of 4.28 used to weight T1.5 demand has been used since at least the 2000 annual filing (*See* NECA June 16, 2000 Annual Filing, Exhibit 12, Workpaper 4 of 15) and is likely to have changed since then.

[9] *Compare*, e.g., *Id.,* Volume 5, Exhibit 12, Workpaper 4 of 13, *with* NECA June 16, 2004

any of the underlying assumptions made by any of the RDTF participants, nor does NECA provide the related demand inputs. Even after receiving a one-month extension in the filing date for its Comments, and after stating that it has received data from twelve companies representing 208 study areas and 4.6 million access lines, NECA does not provide one iota of specific cost information. At a minimum, one would expect that NECA would provide something that would tie back the ratios it derives by company, by type of service or by study area. Rather than produce the analysis requested by the Commission, NECA only provides what it purports to be the relationships between the costs derived from assumptions and data it has not provided. [10]

This analysis may not even be remotely representative of the relevant costs. NECA recognizes this possibility in Attachment B3 and its Comments (at 8) when it notes that some of the data provided represents a very small sample of cost data. Specifically, NECA notes that two of the technologies shown on Attachment B3 were developed from data presented by a single company. In addition to the lack of data, Attachment B3 also shows that questionable data may have been provided to NECA. For example, it is unlikely that T1.5 service could be less expensive than a comparable basic voice service. Nonetheless, at least one company reported that the cost of DCS service, if provided using conditioned T-1 (24 voice grade channels), is only 70% of the cost of providing basic voice service (a single voice grade channel).[11]

Annual Filing, Volume 5, Exhibit 12, Workpaper 4 of 13.

[10] In contrast to the scant data NECA provides here, when the five-SLC rule was first adopted in 1997 for price cap carriers for loops used to provide PRI ISDN services, the affected BOCs provided extensive, verifiable cost data in support of the rule, including "information about all NTS cost components." *See Access Charge Reform,* First Report and Order, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, 12 FCC Rcd. 15,982, ¶¶ 113, 116-117 and n.146 (1997). This sharp contrast further confirms that NECA has not come close to sustaining its burden here of providing sufficient evidence to justify changing this rule.

[11] *See* NECA Comments, Attachment B3.

In short, NECA has failed to satisfy its obligation to provide adequate data, including cost studies that are verifiable and sufficiently detailed, to support the rule change it seeks. For this reason alone NECA's Petition should be denied.

II. The Commission Should Retain Its Existing Rule Assessing 24 SLCs for DCS Service, But If Any Change Is Ordered, It Should Not Allow Any Revenue Shortfall To Be Recovered Through Any Subsidy Mechanism Or Increases To SLCs For Non-Multi-line Business Services.

In their Comments, SBC, Verizon and AT&T demonstrated that NECA's proposed rule change is antithetical to the Commission's long-standing and continuing effort to eliminate subsidies and better align rates with costs. Thus, all these commenters urge the Commission to reject NECA's proposal and retain the existing rule. As Verizon observes, NECA's proposal "would be a step backward from the Commission's recent access charge reform decisions which have sought to reduce or eliminate PICCs and CCLCs."[12] SBC's "preferred approach" is for the Commission to "maintain the *status quo* for these services and resolve this issue in the more global Intercarrier Compensation Proceeding."[13] AT&T agrees that the Commission should retain the existing rule.

As AT&T showed in its Comments, any rule change that permits LECs to shift common line costs that could have been recovered through the SLC to subsidy mechanisms, namely the PICC, CCLC, and universal service mechanisms, "creates substantial inefficiencies because those subsidy mechanisms fail to recover the costs directly from the cost-causer, resulting in incorrect market signals, transaction costs, and other market distortions."[14] Under NECA's proposal, consumers nationwide would be forced to subsidize rate-of-return LECs' multi-line

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[12] Verizon at 1.

[13] SBC at 5-7.

[14] AT&T at 3-4.

business customers through the USF to compensate for reduced revenue from the SLC. This is clearly a regressive proposal that is not in the public interest and is inconsistent with the Commission's efforts over the past 20 years to reduce subsidies and encourage cost-based pricing.[15]

Indeed, NECA concedes that its proposal would place an added burden on Interstate Common Line Support ("ICLS") and the High Cost Fund, but it claims this burden is not "substantial" because it will supposedly amount to $17.8 million, which is a small fraction of the current funding requirement.[16] The size of the burden, however, does not cure the conceptual flaw underlying NECA's proposal. Regardless of its size - and the amount is not trivial - this is a burden other ratepayers should not bear. Moreover, NECA's latest estimate of $17.8 million is far higher than its most recent prior estimate of $11.5 million, which suggests that NECA's projections are suspect and the actual impact may be far greater. Accordingly, the Commission should reject NECA's proposal outright.[17]

[15] *See* AT&T at 3-5.

[16] NECA at 11-12. NECA's estimate actually understates the potential impact of the rule change it seeks because it compares its projected $17.8 million additional cost to the size of the entire USF high cost funding requirement ($3.91 billion) to arrive at its projected increase of 0.46%. A comparison of the increase to the ICLS portion of the USF ($1.276 billion) is more appropriate because the increase would actually impact the ICLS, which was created for the express purpose of allowing rate-of-return carriers to recover the difference between SLC revenues and the common line revenue requirement. Even using NECA's methodology, its proposal would result in a far greater increase of 1.58% in the ICLS. But NECA's estimate is still further understated because it does not account for non-NECA carriers who would obtain additional ICLS payments and because it supposes additional revenues to offset the SLC "shortfall" from a port rate of $23.51 rather than $11.62, which it indicates is the rate it would offer. *See* NECA Comments at 11-12 and n.21 (acknowledging that the lower port rate would increase the "shortfall" amount by $1.4 million) and NECA Attachment B5.

[17] As AT&T showed in its Comments (at 8), even assuming, *arguendo*, that in some cases the current SLC assessment may permit LECs to recover more than the cost associated with DCS Service (as NECA's study purports to show) that does not satisfy NECA's burden to justify its proposal. The Commission has recognized that the current SLC caps result in over-recovery in some instances and under-recovery in others. The Commission has nevertheless declined to

If the Commission nonetheless allows a reduction in the number of SLCs assessed on DCS Service, it should adopt corresponding rules to assure that the "lost" SLC revenues are not recovered through subsidy mechanisms paid by other consumers. *See* AT&T at 8-9. Specifically, AT&T urges the Commission to adopt modest increases to the SLC caps for multi-line business customers only, and prohibit increases in the SLC rate for residential and single-line business customers as a result of NECA's proposal. Any "lost" SLC revenues will thus be recovered from the "cost-causers," consistent with the Commission's long-standing policy of phasing out subsidy mechanisms. This modest increase would have minimal impact on multi-line business customers and is unlikely to affect subscribership, as it might if the cost were passed on to consumers or small businesses.

Based on NECA's data (*see* NECA Comments, Attachment B6, line 3), AT&T has calculated that there would be no increase at all in ICLS if the average multi-line business SLC were increased to $9.65 from the current overall average of $8.90 (*see* Attachment 1 hereto).[18] Indeed, even if the multi-line business SLC were increased only to its current allowable maximum of $9.20,[19] NECA's projected "shortfall" would be reduced substantially from $17.8 million to $10.7 million (*see* Attachment 1 hereto). At a bare minimum, rate-of-return LECs should be required to first raise their MLB SLCs to the $9.20 currently allowed before seeking any funding from any other source. Under no circumstances should implementation of NECA's proposal to reduce the number of SLCs applicable to DCS services result in any

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"deaverage" SLC rates to the extent any reductions in SLC revenues would increase LEC recovery from subsidy mechanisms. *See Access Charge Reform*, 15 FCC Rcd. 12962, ¶¶ 120, 128 (2000) ("*CALLS Order*").

[18] Because SLC rates vary among the NECA companies, some of the companies may need to charge more than the $9.65 average, while others would charge less.

[19] *See* Section 69.104 (o)(1) of the Commission's Rules, 47 C.F.R. § 69.104(o)(1).

increase in the subsidy mechanisms, such as the PICC and CCL, that the Commission has long disfavored and sought to eliminate altogether, or in the SLC for residential or single-line business customers.

Verizon's proposal (at 5) that "the Commission should modify its price cap rules to allow carriers to apply five SLCs and line port charges to *new* T-1 derived channel services" is ill-advised and would result in unlawful discrimination. First, and most significantly, Verizon has failed to provide any cost support for the rule change it proposes. Rather, it relies solely on a few conclusory assertions as to cost relationships and provides no underlying cost data at all (*see* Verizon Comments at 5-8), much less the detailed verifiable data that the Commission required of any party seeking a change in the rule.[20] This alone should be dispositive of Verizon's proposal.

Further, it is not clear from Verizon's cursory explanation exactly how implementation of this proposal would affect Verizon's Common Line price cap basket revenues and rates. If Verizon is suggesting that T-1 derived channel services ordered after a certain date should automatically be considered "new" services, then Verizon has clearly misunderstood the definition of a "new" service.[21] Contrary to Verizon's apparent assumption, all revenues that

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[20] Verizon's failure to provide cost support is particularly noteworthy because Verizon sought and was granted a 30 day extension of the filing deadline in this proceeding for the express purpose of allowing it to "gather and submit . . . information, including cost studies and all underlying data" to support the relief it would seek by its Comments. *See Extension Order* at 1-2. The failure to produce any such data gives rise to the inference that there is no valid cost-support for the relief Verizon seeks. *See e.g., In the Matter of James A. Kay, Jr.,* 13 FCC Rcd.16369, ¶ 11 (1998). Verizon's complete absence of supporting data is, of course, also in stark contrast to the quality and quantity of data submitted by the BOCs in the *Access Charge Reform* proceeding, which the Commission found sufficient to adopt the initial five SLC rule for PRI ISDN services. *See, supra*, n.10.

[21] Section 61.3(x) of the Commission's Rules, 47 C.F.R. § 61.3(x), defines a new service as, "A tariff filing that provides for a class or sub-class of service not previously offered by the carrier involved and that enlarges the range of service options available to ratepayers." Offering

Verizon recovers from customers of T-1 derived channel services, regardless of whether the customers are existing or new, must immediately be part of its Common Line price cap basket and not subject to the application of Section 61.42(g) of the Commission's rules, 47 C.F.R. § 61.42(g), under which revenues from "new services" are not included within the assigned basket until a future annual price cap tariff filing. While Verizon speculates about the possible "introduction of new, innovative services that do not have a fixed number of voice grade channels," it would be premature and beyond the scope of the *Notice* to adopt any new rule based on Verizon's sketchy description of services that do not yet exist.

Finally, if Verizon's proposal would result in existing DCS services being billed 24 SLCs and DCS services ordered after a certain date being billed five SLCs, then its proposal is blatantly discriminatory as well.[22] Verizon does not even attempt to justify such discrimination and there appears to be no cost justification for charging two sets of customers who have ordered the exact same service on two different dates, a different number of SLCs.

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the exact same service at two different prices cannot transform the service at the new price into a new service.

[22] *See MCI Telecommunications* v. *FCC*, 842 F.2d 1296, 1303 (D.C. Cir. 1988); *Investigation of Special Access Tariffs of Local Exchange Carriers,* Tentative Decision, 8 FCC Rcd. 1059, ¶ 19 (1994); *Ad Hoc Telecommunications Users Committee* v. *FCC*, 680 F.2d 790, 796 (D.C. Cir. 1982); *American Broadcasting Companies, Inc.* v. *FCC*, 663 F.2d 133, 139 (D.C. Cir. 1980).

CONCLUSION

For the foregoing reasons, the Commission should *not* reduce the SLCs applicable to DCS Services but, if it does adopt any change in its current rules, such change should be in strict accordance with the conditions described herein.

Respectfully submitted,

AT&T Corp.

By /s/ Mart Vaarsi

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December 13, 2004

IMPACT OF REDUCED SLCs ON INTERSTATE COMMON LINE SUPPORT FOR NECA COMPANIES
Test Period: July 1, 2004 - June 30, 2005

End User Revenue at Current Rates:					
Line		**Source**	**Demand** (A)	**Avg. Rate** (B)	**Revenue** C = A*B*12
1	EU Tariff Members	2004 Access Filing, Vol. 4, Ex. 2, Line 3	1,904,717	$9.12	$208,417,886
2	Non-EU Tariff Members	2004 Access Filing, Vol. 4, Ex. 2, Line 7	273,620	$7.40	$24,302,141
3	Total	Line 1 + Line 2	2,178,337	$8.90	$232,720,027
4	DS1 Channel Service Arrangements	Attachment B6, Line 1	10,183		
5	SLC MLB Line Loss	Line 4 * (24 - 5)	193,477		
Impact of Reduced SLC Lines at Current Rates:					
6	MLB SLCs	Line 3A - Line 5A	1,984,860	$8.90	$212,050,143
7	DS1 Channel Service Ports	Attachment B6, Line 5	10,183	$23.51	$2,872,828
8	Increased ICLS Requirement	Line 3C - Line 6C - Line 7C			$17,797,056
Impact of Reduced SLC Lines at $9.20:					
9	MLB SLCs	Line 3A - Line 5A	1,984,860	$9.20	$219,128,544
10	DS1 Channel Service Ports	Line 4	10,183	$23.51	$2,872,828
11	Increased ICLS Requirement	Line 3C - Line 9C - Line 10C			$10,718,655
Impact of Reduced SLC Lines at $9.65:					
12	MLB SLCs	Line 3A - Line 5A	1,984,860	$9.65	$229,846,788
13	DS1 Channel Service Ports	Line 4	10,183	$23.51	$2,872,828
14	Increased ICLS Requirement	Line 3C - Line12C - Line 13C			$411

SOURCES:

June 16, 2004 NECA Access Charge Filing, Volume 4, Exhibit 2

November 12, 2004 NECA Comments, WC Docket No. 04-259, RM-10603, Attachment B6

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December 2004, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to be served on all parties by first class mail, postage prepaid to their addresses listed below.

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